IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

Crl.MC.No. 2454 of 2007()

CC.419/2005 of JUDL. MAGISTRATE OF FIRST CLASS COURT, ADIMALI

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PETITIONER: ACCUSED NO.15

NISHAD V.S., S/O. SREEDHARAN,
VELLAPPILLIL HOUSE, MANNAMKANDOM VILLAGE,
ADIMALY.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENTS: STATE

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 01/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 2454 of 2007

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Dated this the 1st day of August, 2007

O R D E R

The petitioner, along with the co-accused, faces indictment in a prosecution for offences punishable, inter alia, under Section 427 I.P.C. All offences alleged against the petitioner are bailable, submits the learned counsel. The petitioner was not available for trial. Some of the co-accused face trial. Some of them (except A3) were found not guilty and acquitted. The case against the petitioner was split up. Coercive processes have been issued against the petitioner by the learned Magistrate.

2. According to the petitioner he is absolutely innocent. His failure/omission to appear earlier was not wilful, but was due to reasons beyond his control. He is willing to surrender before the learned Magistrate and seek bail. He shall co-operate with the Court for the expeditious disposal of the case. But he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. In these circumstances it is prayed that appropriate directions may be issued to the learned Magistrate to release the petitioner on bail on the date of surrender itself.

3. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

4. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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